



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Re. Appln: John Underbrink, et al
Serial No.: 10/652,112
Filed: August 29, 2003
For: FOLDING SINK
Confirmation No.: 1842
Art Unit: 3751
Examining Atty: Khoa D. Huynh
Attorney: Gerald E. Helget
Attorney Docket No.: 35249.26
Additional Fees: Charge to Deposit Account 02-3732

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICANT'S APPEAL BRIEF

Applicant, by his attorney, submits one copy of this Appeal Brief, pursuant to the Office Action mailed October 29, 2004 and 37 C.F.R. § 1.192 and §41.37(a) in further of the Appeal, the notice of which was filed with the United States Patent and Trademark Office on January 20, 2005.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service as First Class Mail, in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

By Gerald E. Helget
Date 8 Apr 05

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I. REAL PARTY IN INTEREST

The real party in interest is Today's Gear, Inc., the assignee.

II. RELATED APPEALS AND INTERFERENCES

An appeal has been filed in related U.S. Patent Serial Number 10/652,111.

III. STATUS OF CLAIMS

The claims on appeal are claims 1-20.

IV. STATUS OF AMENDMENTS

An amendment was attempted to be made on December 13, 2004 but was disallowed by the Examiner.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is: a sink (100, page 5) comprising a basin (102, page 5) and a faucet assembly (108, page 6) comprising a discharge neck (112, page 6) coupled to a faucet housing (116, page 6), the faucet housing movably supported on the basin and selectively rotatable between an upright position (Fig. 1) wherein at least a portion of the discharge neck protrudes from the basin such that in operation the discharge neck discharges a stream of water receivable in the basin, and a folded position (Fig. 5) wherein the faucet assembly is received within the basin for storage.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-3, 5, 9-14, 16 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Polakoff et.al (U.S. Patent No. 449,430) (herein after "Polakoff"). This rejection is respectfully traversed and Applicant respectfully submits that the Final Office Action has made an improper prima facie showing of anticipation because Polakoff does not disclose claims 1-3, 5, 9-14, 16 and 17, respectively.

VIII. ARGUMENT

A. The Applicable Law under 35 U.S.C. §102(b)

A single prior art reference anticipates a claimed invention only if it discloses each and every claim element. *Structural Rubber Prod. Co. v. Park Rubber Co.*, 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984).

B. Claim 1 is not anticipated by Polakoff.

Polakoff does not disclose: "a faucet assembly comprising a discharge neck coupled to a faucet housing, the faucet housing movably supported on the basin and selectively rotatable between an upright position wherein at least a portion of the discharge neck protrudes from the basin such that in operation the discharge neck discharges a stream of water receivable in the basin, and a folded position wherein the faucet assembly is received within the basin for storage."

As claimed, the "faucet assembly" is the "discharge neck coupled to the faucet housing." Furthermore, the faucet housing must be "movably supported on the basin." In addition, the faucet assembly "must be received within the basin for storage."

As seen in Figs. 4 and 5 of Polakoff, the faucet assembly F, H, H' is not supported on the basin d, but above the basin D on the horizontal partition b. As seen in Fig. 6, the faucet assembly F, H, H' is not received within the basin D (part F and most of H remain above the basin). Claim 1 is therefore allowable.

C. Claim 2 is not anticipated by Polakoff.

Polakoff does not disclose a "faucet assembly" which "includes a flow control valve." Therefore, claim 2 contains additional elements or limitations beyond allowable claim 1 and is separately patentable and therefore does not stand or fall together with claim 1. Claim 2 is therefore allowable.

D. Claim 3 is not anticipated by Polakoff

Polakoff does not disclose a "basin" that "has a top portion which defines a plane and wherein the faucet assembly is located completely below the plane when in the folded position." Specifically as to claim 3, it is quite clear that the faucet assembly of Polakoff is not located completely below the plane of the basin's top portion when in a folded position (see Fig. 6).

Therefore, claim 3 contains additional elements or limitations beyond allowable claim 1 and is separately patentable and therefore does not stand or fall together with claim 1. Claim 3 is therefore allowable.

E. Claim 5 is not anticipated by Polakoff

Polakoff does not disclose a "basin" that "further comprises a retainer that releasably retains the faucet assembly in the folded position." Therefore, claim 5 contains additional elements or limitations beyond allowable claim 1 and is separately patentable and therefore does not stand or fall together with claim 1. Claim 5 is therefore allowable.

F. Claim 9 is not anticipated by Polakoff

As to claim 9, Polakoff does not show the faucet housing attached to the basin, but above the basin as previously discussed. Claim 9 is therefore allowable.

G. Claim 10 is not anticipated by Polakoff

Claim 10 of the present invention discloses a drain. Polakoff does not disclose a drain, rather a waste-water receptacle. Therefore, claim 10 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 1. Claim 10 is therefore allowable.

H. Claim 11 is not anticipated by Polakoff

Polakoff does not disclose a "basin" that "further comprises a retainer that releasably retains the faucet assembly in the folded position." Therefore, claim 11 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 9. Claim 11 is therefore allowable.

I. Claim 12 is not anticipated by Polakoff

Polakoff does not disclose a "retainer" which "comprises one or more detents on the faucet housing." Polakoff does not disclose a retainer or detents in any regard. Therefore, claim 12 contains additional elements or limitations beyond allowable claim 11 and is separately patentable and therefore does not stand or fall together with claim 11. Claim 12 is therefore allowable.

J. Claim 13 is not anticipated by Polakoff

Polakoff does not disclose "a flow control valve supporting in the faucet housing." Therefore, claim 13 contains additional elements or limitations beyond allowable claim 9 and

is separately patentable and therefore does not stand or fall together with claim 9. Claim 13 is therefore allowable.

K. Claim 14 is not anticipated by Polakoff

Polakoff does not disclose "a flow control valve" which "comprises a connector for receiving the discharge neck." Therefore, claim 14 contains additional elements or limitations beyond allowable claim 13 and is separately patentable and therefore does not stand or fall together with claim 13. Claim 14 is therefore allowable.

L. Claim 16 is not anticipated by Polakoff

Polakoff does not disclose a "conduit for supplying liquid to the faucet housing." Further, Polakoff does not show the conduit (124) in claim 16, as illustrated in Figs. 3b and 3c. Therefore, claim 16 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 9. Claim 16 is therefore allowable.

M. Claim 17 is not anticipated by Polakoff

Specifically as to claim 17, it is quite clear that the faucet assembly of Polakoff is not located completely below the plane of the basin's top surface when in a folded position (see Fig. 6). Claim 17 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 9. Claim 17 is therefore allowable.

VIII. SUMMARY

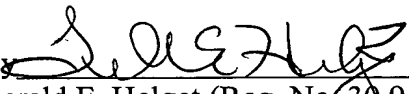
For the reasons argued above, claims 1-3, 5, 9-14, 16 and 17 were not properly rejected under §102(b) as being anticipated by Polakoff.

Appellant respectfully submits that the art cited does not render the claim anticipated and the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claims are respectfully requested.

Respectfully submitted,
JOHN UNDERBRINK
PETER HILL

By their representatives,

Dated: 8 Apr 05

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CLAIMS APPENDIX

The Claims on Appeal

IN THE CLAIMS

1. (original) A sink comprising:
a basin; and
a faucet assembly comprising a discharge neck coupled to a faucet housing, the faucet housing movably supported on the basin and selectively rotatable between an upright position wherein at least a portion of the discharge neck protrudes out from the basin such that in operation the discharge neck discharges a stream of water receivable in the basin, and a folded position wherein the faucet assembly is received within the basin for storage.
2. (original) The sink of claim 1, wherein the faucet assembly includes a flow control valve.
3. (original) The sink of claim 1, wherein the basin has a top portion which defines a plane and wherein the faucet assembly is located completely below the plane when in the folded position.
4. (canceled).
5. (original) The sink of claim 1, wherein the basin further comprises a retainer that releasably retains the faucet assembly in the folded position.
6. (canceled).
7. (canceled).
8. (canceled).
9. (original) A sink comprising:
a basin;
a faucet assembly attached to the basin, the faucet assembly including:
a discharge neck,
a handle for controlling liquid flow through the discharge neck, and

a faucet housing supporting the discharge neck on the basin; and

a mounting means for pivotally coupling the faucet housing to the basin such that the faucet assembly may be pivoted through an angle of approximately ninety degrees about a horizontal axis defined by the mounting means.

10. (original) The sink of claim 9, wherein the basin includes a drain.

11. (original) The sink of claim 9, wherein the basin includes a retainer for releasably retaining the faucet assembly in the folded position.

12. (original) The sink of claim 11, wherein the retainer comprises one or more detents on the faucet housing.

13. (original) The sink of claim 9, further comprising a flow control valve supported in the faucet housing.

14. (original) The sink of claim 13, wherein the flow control valve comprises a connector for receiving the discharge neck.

15. (original) The sink of claim 14, wherein the connector allows the discharge neck to rotate about a vertical axis.

16. (original) The sink of claim 9 further comprising a conduit for supplying liquid to the faucet housing.

17. (original) The sink of claim 9, wherein the faucet assembly may be pivoted between an upright position in which at least a portion of the discharge neck protrudes from the basin and a folded position in which the faucet assembly is below a plane defined by a top surface of the basin.

18. (canceled).

19. (canceled).

20. (amended) The sink of claim [19] 23, wherein the peg is retained within the enclosure by a spring.

21. (new) A sink comprising:
a basin; and
a faucet assembly comprising a discharge neck coupled to the faucet housing, the faucet housing movably supported on the basin and selectively rotatable between an upright position wherein at least a portion of the discharge neck protrudes out from the basin such that in operation the discharge neck discharges a stream of water receivable in the basin such that in operation the discharge neck discharges a stream of water receivable in the basin, and a folded position wherein the faucet assembly is received within the basin for storage, wherein the faucet housing includes a pivot detent that is in contact engagement with an interior surface of the basin when the faucet assembly is in the upright position.

22 (new) A sink comprising:
a basin;
a faucet assembly attached to the basin, the faucet assembly including:
a discharge neck;
a handle for controlling liquid flow through the discharge neck, and
a faucet housing supporting the discharge neck on the basin; and
a mounting means for pivotally coupling the faucet housing to the basin such that the faucet assembly may be pivoted through an angle approximately ninety degrees about a horizontal axis defined by the mounting means, wherein the mounting means comprises bushing received within an enclosure in the basin.

23. (new) A sink comprising:

- a basin;
- a faucet assembly attached to the basin, the faucet assembly including:
 - a discharge neck;
 - a handle for controlling liquid flow through the discharge neck, and
 - a faucet housing supporting the discharge neck on the basin; and
- a mounting means for pivotally coupling the faucet housing to the basin such that the faucet assembly may be pivoted through an angle of approximately ninety degrees about a horizontal axis defined by the mounting means,
- wherein the mounting means comprises a peg received within an enclosure in the basin.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.